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Joint Stakeholder Submission

Submitted By: WeSpeakOut, Equality Now, Sahiyo, South Asia Forum for Freedom of Religion or Belief, Institute of Islamic Studies and The YP Foundation

Information About Submitting Organisations

WeSpeakOut is a survivor-led organization composed of women from the Bohra community. Established in 2015, we are committed to ending Female Genital Mutilation/Cutting/ Khafz in India and worldwide. We aim to use a combination of methods including legal advocacy, research, community outreach in order to effectively remove forced FGM/C against the girl child from within the Bohra community and the Indian society.

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Equality Now is an international human rights organization with ECOSOC status working to protect and promote the rights of women and girls worldwide since 1992, including through our membership network of individuals and organizations in over 160 countries.

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Sahiyo is an international nonprofit organization whose mission is to “empower Asian and other communities to end female genital cutting and create positive social change through dialogue, education, and collaboration based on community involvement”.

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South Asia Forum for Freedom of Religion or Belief (SAF -FoRB) is a platform for civil societies, religious minorities, and human rights organisations who are responding to the challenges of Freedom of Religion or Belief in South Asia as a Human Rights concern. The Forum has been envisioned in the context of shrinking space for the religious minorities and civil societies in the region and to address the FoRB concerns.

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The Institute of Islamic Studies was founded to project Islam and Islamic values in the correct Qur’anic perspective and to emphasise fundamental Islamic values of justice, equality, peace, compassion, human dignity, freedom of conscience, inter-faith understanding and wisdom.

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The YP Foundation (TYPF) is a youth development organisation that facilitates young people’s feminist and rights-based leadership on issues of health equity, gender justice, sexuality rights, and social justice. TYPF ensures that young people have the information, capacity, and opportunities to inform and lead the development and implementation of programmes and policies that impact their lives and are recognised as skilled and aware leaders of social change.

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Introduction

1. Female Genital Mutilation/Cutting (FGM/C) is known to be practiced in India by the Dawoodi, Alvi and Suleimani Bohra communities, as well as certain sections of Sunni Muslims.¹ In the Bohra community, khatna/khafz (which largely consists of the removal of the prepuce tissue off the clitoris) is equivalent to Type I or Type IV FGM/C as classified by the World Health Organization. This practice causes deep physical, sexual, and/or psychological harm to women and girls who are subjected to it.
2. India has not received any recommendations relating to FGM/C in previous UPR cycles, likely due to lack of awareness, both within India and globally, about the prevalence of FGM/C in the country. However, in previous UPR cycles, the Indian government has made recommendations to Guinea in 2020 to “[c]ontinue its efforts to eliminate harmful practices such as forced marriage and female genital mutilation”;² to Mali in 2018 to “[a]dopt legislation outlawing all forms of gender-based violence, including the traditional practice of female genital mutilation”³; and to Gambia in 2014 to “[c]onsider enacting a comprehensive law prohibiting the practice of female genital mutilation”.⁴ Despite this, within its own country, the Indian government has failed to take any steps to end FGM/C and even denies the existence of this harmful practice.
3. This submission outlines the gaps in protection of the rights of women and girls in India from the harmful practice of FGM/C, provides critical information on the prevalence of FGM/C/Khafz within the country, and provides recommendations on the actions needed to be taken by the Indian government to eliminate the practice of FGM/C.

Context Analysis

4. The Bohra community is a small Muslim minority group in India of approximately 1 million individuals. As a professed expression of religion,⁵ they practice FGM/C type

¹ See Equality Now, U.S. End FGM/C Network and European Network to End FGM, Female Genital Mutilation/Cutting: A call for a Global Response, available here:

https://www.endfgm.eu/editor/files/2020/04/FGM_Global_-_ONLINE_PDF_VERSION_-_07.pdf

² Report of the Working Group on the Universal Periodic Review: Guinea, Human Rights Council, 44th Session, 24 March 2020, A/HRC/44/5, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/071/75/PDF/G2007175.pdf?OpenElement>

³ Report of the Working Group on the Universal Periodic Review: Mali, Human Rights Council, 38th Session, 17 April 2018, A/HRC/38/7, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/106/50/PDF/G1810650.pdf?OpenElement>

⁴ Report of the Working Group on the Universal Periodic Review: Gambia, Human Rights Council, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/250/81/PDF/G1425081.pdf?OpenElement>

⁵ Islamic texts do not prescribe FGM/C but Dawoodi Bohra practitioners often believe otherwise.

I/IV (cutting of the clitoral hood or the clitoris causing injury to clitoral glans and/or the prepuce)⁶ on Bohra minor girls, who are usually subjected to FGM/C around the age of 7. The community refers to the practice as “Khafz”, semantically distancing it from FGM/C. Studies revealed that more than 75% of Bohra girls, aged around seven years, were subjected to FGM/C in India,⁷ whereas the latest study reveals the number to be 99%.⁸

5. WeSpeakOut conducted the first⁹ qualitative national-level study of FGM/C amongst Bohras in 2018, that sought to understand how Khafz is practiced across India, the reasons behind it, the varied impact of FGM/C on women’s and men’s lives, and the attitudes surrounding FGM/C. The study, titled ‘The Clitoral Hood a Contested Site’, largely included participants from the Bohra community and found that seventy five percent (75%) of all daughters of the study sample were subjected to FGM/C, which means it continues to be practiced on little girls. Ninety seven percent (97%) of women who remembered their FGM/C experience from childhood recalled it as painful.¹⁰
6. Two participants from the Sunni Muslim community were also included in the WeSpeakOut study, who reported that girls from their community were usually cut as babies below the age of one. Despite some scant evidence, it has been difficult to access and learn more about the practice of FGM/C amongst other communities in India (including a Sunni Muslim community in Kerala and a few other unknown ones in the South). This is mostly due to the covert nature of the practice and the extreme reluctance of all members of the affected community to speak about the same.

Lack of a Specific Law against FGM/C in India

7. The practice of FGM/C has severe implications on women and girls’ bodily integrity and bodily autonomy; and also violates their constitutional rights to equality, non-discrimination and privacy.¹¹ The continued existence of FGM/C in India and the failure of the Indian government to pass a law banning the practice also violates India’s

⁶ 'Types of Female Genital Mutilation' (*Who.int*, 1997) <<https://www.who.int/teams/sexual-and-reproductive-health-and-research/areas-of-work/female-genital-mutilation/types-of-female-genital-mutilation>> accessed 14 March 2021.

⁷ Mariya Taher, 'Understanding Female Genital Cutting In The Dawoodi Bohra Community: An Exploratory Study' (Sahiyo 2017) <https://sahiyo.files.wordpress.com/2019/05/sahiyo_report_final-5.21.19.pdf> accessed 14 March 2021; Lakshmi Anantarayan, Shabana Diler and Natasha Menon, 'The Clitoral Hood: A Contested Site', (WeSpeakOut and Naari Samta Manch, 2018)<http://wespeakout.org/site/assets/files/1439/fgmc_study_results_jan_2018.pdf> accessed 14 March 2021.

⁸ Zimran Samuel, 'Female Circumcision within the Dawoodi Bohra Community', (Doughty Street 2021).

⁹ Report of the Working Group on the Universal Periodic Review: Gambia, Human Rights Council, 28th Session, 24 December 2014, A/HRC/28/6, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/250/81/PDF/G1425081.pdf?OpenElement>

¹⁰ Lakshmi Anantarayan, Shabana Diler and Natasha Menon, 'The Clitoral Hood: A Contested Site', (WeSpeakOut and Naari Samta Manch, 2018)<http://wespeakout.org/site/assets/files/1439/fgmc_study_results_jan_2018.pdf> accessed 14 March 2021.

¹¹ Articles 14, 15 and 21, Indian Constitution

international obligations under various treaties, including *inter alia* the right to life guaranteed under the Convention on the Rights of the Child (CRC) and the International Covenant on Civil and Political Rights (ICCPR); the right to non-discrimination under the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) and the right to health under the International Covenant on Economic, Social and Cultural Rights (ICESCR).

8. The practice of carrying out FGM/C may potentially be addressed under the existing laws of sexual assault, child sexual abuse and hurt, by qualifying it as a form of “hurt or grievous hurt” under the Indian Penal Code (IPC) and/or a crime under Section 3 of the Protection of Children from Sexual Offences Act (POCSO). However, as highlighted in a report published by WeSpeakOut, *Female Genital Mutilation – A Guide to Eliminating the Practice of FGM in India*, the lack of a specific mention of FGM/C in India’s criminal laws means that the practice largely goes unnoticed since it is shrouded in secrecy and the community prefers to remain silent on the subject with members of the community even fearing ostracisation if they oppose FGM/C.¹² As a result, existing general criminal provisions have never been used to prosecute FGM/C in India till date.
9. Ensuring complete elimination of the practice of FGM/C requires law reform or the passage of a separate law against FGM/C which adopts a holistic approach towards ending the practice. Such an approach needs to address the various aspects of FGM/C including abetting or aiding the practice, propagating the practice, prevention of FGM/C, regulations on medical/health professionals who carry out this practice, duty to report, support and rehabilitative provisions and awareness building.
10. In recognition of this, a public interest litigation requesting a legal ban on the practice of FGM in India was filed before the Supreme Court.¹³ However, the case has now been tagged with other cases relating to the right to religious freedom under the Constitution and referred to a 9-Judge Bench to decide on the larger issue of the scope and ambit of the right to religious freedom; and balancing the right to religion with other fundamental rights. Prior to the referral, the judges on the bench made oral remarks stating that FGM prima facie appears to be a violation of the right to privacy guaranteed by the Constitution, and the bodily integrity of the child.¹⁴ The Court also noted that there seems to be no scientific or medical basis for the practice of FGM, which is likely to cause a

¹² WeSpeakOut & Lawyers Collective, *Female Genital Mutilation – A Guide to Eliminating the Practice of FGM in India*, available at: <https://www.lawyerscollective.org/wp-content/uploads/2012/07/Female-Genital-Mutilation-A-guide-to-eliminating-the-FGM-practice-in-India.pdf>

¹³ *Sunita Tiwari v. Union of India*, Writ Petition (Civil) No. 286/2017 (Public Interest Litigation).

¹⁴ The New Indian Express, Female genital mutilation violative of constitutional rights: Supreme Court, 30 July 2018, available online at <http://www.newindianexpress.com/nation/2018/jul/30/female-genital-mutilation-violative-of-constitutional-rights-supreme-court-1850779.html>

significant amount of trauma, pain and bleeding.¹⁵

11. Despite the pending case before the Indian Supreme Court, the Indian government still retains the primary responsibility to take action and pass a law banning FGM/C in India, given that this practice is a harmful practice that undermines the dignity, human rights and well being of women and girls.
12. The lack of a legal prohibition on FGM/C in India has also made India a destination country for “vacation cutting”, a practice where Bohra families living in other countries transport their children to India during vacations to subject them to the practice of FGM/C.¹⁶ The presence of laws against FGM/C in countries like the U.S. and Australia has resulted in local religious authorities or Dawoodi Bohra trusts which administer and manage the affairs of the community, issuing edicts against FGM/C within those countries. For instance, the Resolution passed by the Anjuman-e-Burhani Sydney dated 9th February 2016 forbids the practice of FGM/C/Khafz by Bohra communities in Australia, noting the presence of anti-FGM/C laws in the country. These official resolutions are often accompanied by unofficial advice from Jamaat leaders (local religious leaders) for Bohra families living abroad to take their girls to India to be subjected to FGM/C/Khafz, since India does not prohibit the practice.

Failure of the Indian Government to take Action against FGM/C

13. Despite these alarming rates of prevalence of FGM/C amongst the Bohra community, the Indian government has refused to acknowledge the prevalence of FGM/C in India, except on one occasion, where the Minister of Women and Child Development publicly announced the government’s intention to pass a law banning FGM/C if the Bohra community did not voluntarily abandon the practice, in response to a meeting with activists and survivors who highlighted the impact of FGM/C and the data on the practice.¹⁷ Unfortunately, no progress has been made since then. In 2018, the Government's Ministry of Women and Child Development gave a written submission in Indian Parliament that there is no evidence of FGM/C in India as there is no data on FGM/C.¹⁸

¹⁵ Press Trust of India, SC questions rationale behind female genital mutilation, says it can't direct doctors to perform procedure, 31 July 2018, available online at <https://www.firstpost.com/india/sc-questions-rationale-behind-female-genital-mutilation-says-it-cant-direct-doctors-to-perform-procedure-4862561.html>

¹⁶ Mariya Taher, 'Understanding Female Genital Cutting In The Dawoodi Bohra Community: An Exploratory Study' (Sahiyo 2017) <https://sahiyo.files.wordpress.com/2019/05/sahiyo_report_final-5.21.19.pdf> accessed 14 March 2021; Lakshmi Anantarayan, Shabana Diler and Natasha Menon, 'The Clitoral Hood: A Contested Site', (WeSpeakOut and Naari Samta Manch, 2018)<http://wespeakout.org/site/assets/files/1439/fgmc_study_results_jan_2018.pdf> accessed 14 March 2021; See Also, *The Queen v. A2, Kubra, and Vaziri*, [2019] HCA 35.

¹⁷ Lakshmi Anantarayan, Shabana Diler and Natasha Menon, 'The Clitoral Hood: A Contested Site', (WeSpeakOut and Naari Samta Manch, 2018)<http://wespeakout.org/site/assets/files/1439/fgmc_study_results_jan_2018.pdf> accessed 14 March 2021.

¹⁸ Masooms to provide this document.

14. The failure of the government to take action or even acknowledge the existence of FGM/C within the country is despite the efforts of survivors and civil society organisations to raise awareness on the issue since 2015, when an online [petition](#) on Change.org titled 'End Female Genital Mutilation in India' was started by WeSpeakOut. This petition has received 211,770 signatures from around the world. The petition was submitted to the then National Commission for Women (NCW) Chair, Ms Lalitha Kumaramangalam, on 6 February 2017, who pledged support to Speak Out On FGM (now WeSpeakOut) in their campaign to end FGM/C in India and acknowledge the need to eliminate a practice like this which is steeped in patriarchy.¹⁹ However since then, there has been no action taken by the NCW.
15. With the Indian government turning a blind eye, societal efforts against FGM/C are limited to a few NGOs trying to create awareness and advocating for legal bans. Consequently, academic resources on FGM/C in India are scarce, and they come from non-governmental sources. The lack of national-level prevalence data on FGM/C in India means that the issue often goes unnoticed and unaddressed by government authorities, despite evidence provided to them by NGOs in the form of small-scale studies or anecdotal evidence. A key challenge that needs to be addressed on a priority basis, is to at the outset map the national prevalence of FGM/C in India, including in communities other than the Bohras that are yet to be studied. The Indian government needs to take responsibility to address these research gaps and collect data on FGM/C in the country instead of using the lack of national-level data as an excuse to ignore the existence of this harmful practice.
16. The lack of holistic action against FGM/C also means that there is an acute lack of awareness amongst the community members who practice FGM/C as to the medical, sexual and psychological impact of this harmful practice. Studies reveal that most people hesitate to broach this matter, even when they are assured of complete anonymity.²⁰ Information is not even shared with family and friends.²¹ The secretive nature of the practice, combined with lack of awareness has further aggravated the widespread prevalence of this practice in the community. There is a need for the Indian government to take steps to spread awareness and educate the community, especially youth, on the practice and the harm it can cause.
17. In the recent years, especially in metropolitan cities like Mumbai, there is a growing trend in “medicalisation” of the practice and procedure of FGM/C. The involvement of nurses,

¹⁹ Nita Bhalla, India Women's Commission chief backs ban on “barbaric” female genital mutilation, Thomson Reuters Foundation, 7 February 2017, <https://www.reuters.com/article/india-women-fgm-idINKBN15M0FZ?edition-redirect=in>

²⁰ Mariya Taher, 'Understanding Female Genital Cutting In The Dawoodi Bohra Community: An Exploratory Study' (Sahiyo 2017) <https://sahiyo.files.wordpress.com/2019/05/sahiyo_report_final-5.21.19.pdf> accessed 14 March 2021; Lakshmi Anantarayan, Shabana Diler and Natasha Menon, 'The Clitoral Hood: A Contested Site', (WeSpeakOut and Naari Samta Manch, 2018)<http://wespeakout.org/site/assets/files/1439/fgmc_study_results_jan_2018.pdf> accessed 14 March 2021.

²¹ Ibid.

general practitioners and gynaecologists has been brought out in the WeSpeakOut study titled ‘Clitoral Hood: A Contested Site’. Recognising this trend, in February 2020, the Federation of Obstetric and Gynaecological Societies of India (FOGSI) published a policy statement on FGM/C, which “directs all its member gynaecologists and all other health care professionals to desist from performing or participating in any procedure of female genital mutilation.”²²

18. We have a long way to go in the struggle to end FGM/C or Khafz. Immediate action needs to be taken to tackle this pressing issue and ensure that India fulfills its commitment to achieve the Sustainable Development Goals by 2030.

Recommendations

19. We would respectfully urge the following recommendations to be issued to India:

- (i) Pass a separate law that bans all forms of FGM/C in India or strengthen existing laws to explicitly make it a criminal offence for anyone who performs the procedure of FGM/C, or aids, propagates, abets or procures any person to carry out FGM/C. The law should recognise FGM/C as a human rights violation, and a form of gender based violence and child abuse. It should prioritise prevention measures to protect girls and women from FGM/C based on an integrated framework addressing gender based discrimination.

- (ii) Establish a national action plan to eradicate the harmful practice of FGM/C in all its forms across the country and within the Bohra community, including the dedication of resources to prevention and education aspects.

- (iii) Provide support for community-based programming that is non-judgemental, rights-based and addresses harmful social and gender norms and raises public awareness on the harmful nature of the practice.

- (iv) Issue clear guidelines to be issued at the national and state levels which prioritise prevention measures to protect women and girls from FGM/C, including by taking action to identify girls at risk, and implementing an awareness generation campaign regarding the health effects and legal status of the practice of FGM/C under Indian law. Adequate steps should be taken by the State to include religious and community leaders towards prevention and awareness generation.

- (v) Conduct research and collect data on the national prevalence of FGM/C in the country across all communities; as well as invest in qualitative research on the psychological, sexual and health impacts of Type 1/Type 4 FGM/C/Khafz, as performed in India.

²² FOGSI Position Statement on Female Genital Mutilation, available at <https://www.fogsi.org/fogsis-policy-statements/>

(vi) Issue zero tolerance policies prohibiting medical professionals from carrying out FGM/C, and classifying performance of FGM/C as a form of misconduct that would result in disciplinary proceedings.

(vii) Implement gender-sensitive education and information campaigns on sexuality and sexual health, and the health and legal implications of FGM/C particularly targeted at women and girls from at-risk communities.

(viii) Build competency and awareness of healthcare professionals regarding FGM/C and its health effects, and provide education and training for students and practitioners in health professions about FGM/C and the provision of psychological and medical services to women and girls who have undergone FGM/C.

(ix) Until a separate law is passed on FGM/C, take proactive measures to prosecute instances of FGM/C as criminal offences of hurt, grievous hurt, rape and sexual assault under sections 319 to 325 and 375 of the Indian Penal Code, and sections 3 to 9 of the Protection of Children from Sexual Offences Act, 2012; including by issuing appropriate orders/directives/guidelines to the police in all States, which provide education and information to law enforcement officials on the existence and effects of FGM/C in India, the applicability of existing criminal laws, and the need to prosecute these offences.

(x) Require frontline professionals including teachers, doctors and social workers to mandatorily report to the police if any girl is under threat of FGM/C or if it has been performed on any girl or woman.